

NATIONAL INSTITUTES OF HEALTH  
Deputy Ethics Counselors and Ethics Coordinators  
Meeting Minutes: February 27, 2006

Gretchen Weaver raised several issues:

1) NEAC has observed that a number of writing outside activity requests (520s) contain agreements that may restrict employees from writing officially on the same or similar topic. Often, when an employee is invited to write in her private capacity, she is asked to sign a publishing agreement. These agreements often contain clauses that prohibit "competition." Understandably, publishers do not want competition because it can reduce their profit. Nevertheless, NIH experts must be available to write on any topic for NIH in support of the agency's missions.

Ms. Weaver distributed a handout with template language for employees to use when negotiating contracts with publishers. This or something similar needs to be included in the personal publishing agreements of employees who engage in outside authoring activities. This language will "counteract" the clauses we have seen in several agreements that purport to restrict the author's ability to write on similar subjects in other contexts. Such a clause could be interpreted as limiting our employee's ability to write in his/her official capacity.

Language to be Inserted into Personal Publishing Agreements (or something similar): "Nothing in foregoing shall preclude or prevent publication of any work or written material prepared in the course of official U.S. government duties."

2) As a separate matter, Annette Levy of OGC emailed the DEC/EC community Model Copyright Agreements for editing and writing with Humana Press, Inc., on February 10, 2006. Gretchen explained that Annette's message relates to official duty writing and editing. All official duty activities involving Humana should, from this point forward, use this template for the agreement. This agreement does NOT, however, have any relevance for outside activities. In the official duty context, any publishing or editing agreement is, necessarily, between the agency and the publisher, not the employee and the publisher (as in outside activities). The agency is working to develop similar template agreements with other publishers so that the agency does not need to renegotiate the agreement for each and every official duty activity.

3) NEAC has also received several initial outside activity requests that have a history of being active prior to approval. When these packages are submitted it is important to note that the employee has been counseled on the fact they should not have been participating in the activity without prior approval and that they are to renew the activity annually if it continues or changes.

4) Ms. Weaver also reminded the DEC/EC community about the pre-clearance of public financial disclosure (278) statements prior to 278 filers entering any position which requires it. All 278 filers, whether they are senior or not, should have a pre-clearance of their 278, through OGC, before they enter the position.

Traci Melvin announced that the Chief, NIH Ethics Office (CNEO) position has been published in several notable sources and the advertisement of this position will close April 11, 2006.

Ms. Melvin also announced that the discipline process had been sent out to the DEC/EC community and the new 2850 form for reporting non-compliance of ethics issues to IC EOs and/or supervisors was also included in that email. It was stated that this mechanism is for

reporting ethics non-compliance but we, as ethics staff, are not expected, required nor authorized to implement any disciplinary actions upon employees. This form is solely for reporting their non-compliance.

Ms. Melvin also mentioned that EMIS help sheets also went out to the community and can be found in the "help" section of EMIS.

A few reminders to the group were announced by Ms. Melvin and Steve Hausman:

- The Annual Report of Outside Activities (521) Report was due tomorrow 02-28-06.
- The new 348 sponsored travel policy came out this morning and may have an impact on review and analysis of 348 travel.
- When submitting any requests for approval to the NEO, please submit original, hard copies only (no faxes or electronic copies) as this may cause duplicated work. NIEHS in North Carolina is the only exception to this rule.
- Divestiture date for non-senior (Top 5) employees is 90 days past the date they are notified by the DEC to divest.
- Please sign up for the NEES 278 training, as the DEC/ECs will be the first line of authority on how to enter data into the system.
- The March 15 and 16 OGE training classes are currently full.

The question was asked about awards and how they are proceed through to the ACD (Advisory Committee to the Director)

The process is as follows:

- Each IC DEC/EC office submits documentation regarding the award for approval to NEO including the award's written selection criteria and proof that it is given on a regular basis.
- IC Ethics Offices are expected to conduct all research on award criteria.
- The NEO then reviews the award to determine whether it meets the regulatory criteria for being bona-fide and forwards to Dr. Kington for his review.
- Once Dr. Kington has reviewed and concurs that the award is bona-fide the NEO forwards the request to Joan Reede of the ACD.
- Joan then gives the award the preliminary review. If the award is deemed bona-fide, a selected employee may proceed in receiving the award once the DEC has otherwise approved it for the employee.
- The full ACD meets only two times per year (June and December) and votes on their final approval/concurrence for all pending awards and the web site is updated accordingly.

Meeting adjourned at 11:35 am